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RECORD, CASE No. 15,272.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 902.

J. W. BRENNAN, PLAINTIFF IN ERROR,

vs.

THE CITY OF TITUSVILLE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED MARCH 10, 1893.

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INDEX.

	Original.	Print.
Petition for writ of error	1	1
Writ of error	5	2
Citation (copy)	7	3
Bond	9	4
Docket entries	11	5
Appeal and affidavit	12	5
Præcipe for certiorari	13	6
Record from court of common pleas	14	7
Docket entries	14	7
Transcript from city recorder of Titusville	16	8
Bond on appeal	22	11
Testimony of J. W. Brennan	23	12
Agreement as to testimony	25	13
Testimony of J. A. Shephard	26	13
Agreement as to testimony, &c.	27	14
Opinion	28	14

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 18, 1893.

	Original.	Print.
Appeal to supreme court of Pennsylvania	29	15
Bond on appeal	30	15
Agreed statement of facts	31	16
Judgment	35	18
Writ of certiorari	36	18
Assignment of errors	38	19
Opinion	39	20
Judgment	47	24
Petition for writ of error	48	24
Clerk's certificate	52	26

1 *Petition for Writ of Error to Supreme Court of Penna.*

In the Supreme Court of Pennsylvania, in and for the Eastern District.

CITY OF TITUSVILLE } In the Supreme Court of the United States.
vs. } No. —. Term, 1892.
J. W. BRENNAN. }

To the honorable the Chief Justice of the Supreme Court of the United States:

The petition of J. W. Brennan respectively shows:

That your petitioner brought this suit in the supreme court of Pennsylvania, for the eastern district, to No. 121, July term, 1890, by appeal in the nature of a writ of error to a judgment rendered by the court of common pleas of the county of Crawford in a certain action brought by the City of Titusville against J. W. Brennan, your petitioner, at No. 26, September term, 1889, by judgment, in which action it was decreed that your petitioner pay to the said city of Titusville twenty-five dollars and costs of suit.

That on the 5th day of October, 1891, the supreme court of Pennsylvania, sitting at Pittsburgh, in said State and in the western district thereof, ordered that said judgment of the court of common pleas, so rendered against your petitioner at No. 26, September term, 1889, be affirmed, at the cost of your petitioner, and on the 6th day of October, 1891, the said judgment

2 of the supreme court of Pennsylvania was duly entered in the eastern district aforesaid.

That the said judgment of the supreme court of Pennsylvania is the judgment of the highest court of said State and is final.

That the second final judgment draws in question the validity of a statute of the State of Pennsylvania, approved May 23rd, 1889, which provides by the first section thereof that the city of Titusville, a city of the third class under said law, shall have power, *inter alia*, to levy and collect for general revenue purposes a license tax, not exceeding one hundred dollars each, annually on all hawkers, pedlars, produce or merchandise venders.

And also draws in question an authority exercised by the city of Titusville, a municipal corporation of said State of Pennsylvania, under said statute and under an ordinance of said city passed persuant thereto, and alleged to be valid under said act of May 23rd, 1889, and under the laws of the State of Pennsylvania, which said ordinance provides, *inter alia*, "That all persons canvassing or soliciting within said city orders for goods, books, paintings, wares, or merchandize of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the mayor license to transact said business;" and in the eighteenth section thereof, that any person failing to obtain said license shall, upon conviction before any magistrate, be fined not

exceeding one hundred dollars; and the decision of the said
3 supreme court of Pennsylvania was in favor of the validity of said statutes and of the exercise of said authority under the laws of said State by the said city of Titusville.

That the said judgment and decision of the supreme court of Pennsylvania was in contravention of the third clause of the eighth section of the first article of the Constitution of the United States, which provides, *inter alia*, that Congress shall have power to regulate commerce among the several States, the said defendant, your petitioner, being engaged in carrying on commerce among the States, within the meaning of said clause of the Constitution, and the judgment aforesaid having been rendered against him for the amount of a fine inflicted upon him for failing to take out a license under said statutes of Pennsylvania, ordinance of said city of Titusville, and authority so exercised under said statutes.

That the said court of common pleas of the county of Crawford, of said State of Pennsylvania, and the said supreme court of Pennsylvania had no jurisdiction to pronounce said judgment against your petitioner, but the said jurisdiction is by the Constitution exclusively vested and cognizable by the United States and the Federal courts; wherefore the said judgments are void.

Your petitioner therefore prays for the allowance of a writ of error to the supreme court of Pennsylvania, to the end that the said judgment of said court may be examined, and reversed or affirmed in the Supreme Court of the United States.

And he will ever pray.

J. W. BRENNAN,
By SHERMAN & GRUMBINE,
His Attorneys.

4 STATE OF PENNSYLVANIA, }
County of Crawford, } *ss:*

Samuel Grumbine, being sworn, says that he is one of the attorneys of record of J. W. Brennan, the petitioner, authorized to make this petition in his behalf and familiar with the facts, and that the statements of fact made in the foregoing petition are true, as he verily believes.

SAMUEL GRUMBINE.

Sworn and subscribed before me this 6th day of May, 1892.

EUGENE MACKEY,
[SEAL.] *Notary Public.*

5 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Pennsylvania, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before

you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between J. W. Brennan, appellant, and The City of Titusville, appellee, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or
6 statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of February, in the year of our Lord one thousand eight hundred and ninety-three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
GEORGE SHIRAS, Jr.,
Associate Justice of the Supreme Court of the United States.

7 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To The City of Titusville, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Pennsylvania, wherein J. W. Brennan is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this 27th day of February, in the year of our Lord one thousand eight hundred and ninety-three.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

8 *Proof of Service of Citation.*

CRAWFORD COUNTY, *ss:*

On this first day of March, in the year of our Lord one thousand eight hundred and ninety-three, personally appeared Samuel Grumbine before me, the subscriber, Eugene Mackey, a notary public for Pennsylvania, at the city of Titusville, in said county of Crawford, and makes oath that he delivered a true copy of the within citation to Edward O. Emerson, mayor of the city of Titusville, Pa., within named, personally, this first day of March, 1893.

SAMUEL GRUMBINE.

Sworn to and subscribed the first day of March, A. D. 1893.

[SEAL.] EUGENE MACKEY,
Notary Public.

9 *Recognizance, Surwrit of Error to S. C. of the U. S.*

Know all men by these presents that we, J. W. Brennan, as principal, and Joseph A. Shepard and Mary A. Shepard, of Chicago, State of Illinois, as sureties, are held and firmly bound unto The City of Titusville, in the State of Pennsylvania, in the full and just sum of two hundred and fifty dollars, to be paid to the said The City of Titusville, its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twentieth day of February, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas lately, at a supreme court of the State of Pennsylvania, in a suit depending in said court between J. W. Brennan, appellant, and The City of Titusville, appellee, a judgment was rendered against the said J. W. Brennan; and the said J. W. Brennan having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The City of Titusville, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said J. W. Brennan shall prosecute said writ to effect and an-

swer all damages and costs if he fails to make his plea good,
10 then the above obligation to be void; else to remain in full force and virtue.

J. W. BRENNAN, [SEAL.]
By SHERMAN & GRUMBINE,
His Att'ys.
JOS. A. SHEPARD. [SEAL.]
MARY A. SHEPARD. [SEAL.]

Sealed and delivered in presence of—
—— ——.

Approved as to sureties by—
S. W. BURNHAM,
[SEAL.] *Clerk U. S. Court, Nor. Dist. Ill.*

Approved by—
GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

11 In the Supreme Court of Pennsylvania, in and for the Eastern District.

Among the records and proceedings of the supreme court of Pennsylvania, in and for the eastern district, *inter alia*, it is thus contained, to wit:

July term, 1890. No. 121.

Docket Entries.

CITY OF TITUSVILLE, Plaintiff, }
vs. } 121.
J. W. BRENNAN, Defendant. }

Roger Sherman; Samuel Grumbine.

Appeal of def't from the court of common pleas of the county of Crawford. Filed May 31, 1890.

Eo die, certiorari exit, ret'ble the fourth Monday of April, 1891.

April 6th, 1891.—Record returned and filed.

April 28, 1891.—Assignments of error filed.

April 28, 1891.—Argued.

October 5, 1891.—The judgment is af-irmed; opinion by Williams, J.

January 2, 1892.—Petition for writ of error to the Supreme
12 Court of the United States received and filed. Sherman & Grumbine.

Eo die, writ refused. Edward M. Paxson, chief justice.

March 1, 1893.—Writ of error to the Supreme Court of the United States brought into office.

Eo die, recognizance surwrit of error to the Supreme Court of the United States filed.

Eo die, citation and proof of service filed.

Appeal and Affidavit.

Court of Common Pleas of the County of Crawford, September Term, 1889.

CITY OF TITUSVILLE, Plaintiff,
v.
J. W. BRENNAN, Defendant. } No. 26.

Enter appeal on behalf of defendant from the judgment of the court of common pleas of the county of Crawford.

SHERMAN & GRUMBINE,
Att'ys for Appellant.

To Charles S. Greene, proth'y sup. c't, E. D.

COUNTY OF CRAWFORD, *ss:*

Samuel Grumbine, being duly sworn, saith that the above appeal is not intended for delay.

SAMUEL GRUMBINE.

Sworn and subscribed this 30th day of May, A. D. 1890.

A. B. EDSON, *Proth'y.*

13 Endorsement: Supreme court of Pennsylvania, eastern district. No. 121. July term, 1890. City of Titusville *vs.* J. W. Brennan, appellant. Appeal and affidavit. Filed in supreme court May 31, 1890. Roger Sherman, Samuel Grumbine.

Præcipe for Certiorari.

CITY OF TITUSVILLE
vs.
J. W. BRENNAN. } No. 26.

Appeal by defendant from the judgment of the court of common pleas for the county of Crawford, of September term, 1889.

Issue writ of certiorari to the court common pleas for the county of Crawford to remove record and proceedings in a certain action in said court, No. 26, September term, 1889, in which the said City of Titusville is plaintiff and the said J. W. Brennan is defendant.

Returnable to next term, *sec. reg.*

ROGER SHERMAN,
SAMUEL GRUMBINE,
Att'ys for Appellant.

To Chas. S. Greene, Esq., proth'y sup. c't.

COUNTY OF CRAWFORD, *ss:*

Samuel Grumbine, being duly sworn, saith the writ of certiorari applied for and purchased in above-entitled case is not intended for delay.

SAMUEL GRUMBINE.

Sworn to and subscribed this 30th day of May, A. D. 1890.
A. B. EDSON, *Proth'y.*

14 Endorsement: No. 121. July term, 1890. City of Titusville *vs.* J. W. Brennan, appellant. Praecipe for writ of certiorari to C. P. of Crawford county on appeal by defendant from the judgment of said court. Filed in supreme court May 31, 1890. Roger Sherman, Samuel Grumbine.

In the Court of Common Pleas of Crawford County.

Copy of Appearance Docket Entries at No. 26.

September term, 1889.

THE CITY OF TITUSVILLE
vs.
J. W. BRENNAN.

Transcript of a judgment from the docket of Waldron M. Dame, city recorder of the city of Titusville, Pa., with affidavit of def't annexed.

Geo. A. Chase, Sherman & Grumbine.

Entered June 3, 1889.

June 3, 1890.—Appeal allowed upon payment of all costs before the recorder and upon entering into bail in the sum of one hundred dollars for costs, appeal to be entered within ten days.

Per curiam.

June 10, 1889.—Bond of J. W. Brennan, def't on appeal, with A. S. Ralston as surety, in the sum of one hundred dollars,
15 filed, with receipt of W. M. Dame, recorder, annexed, for $4.78, costs on recorder's docket in above case.

August 1, 1889.—Testimony of J. W. and J. A. Shepard and agreement that the same may be read on trial; also agreement that facts stated shall be a case stated, and argued before court without a jury filed.

On argument list for November term, 1889, No. 39.

December 26, 1889.—Argued. C. A. V.

May 12, 1890.—Opinion of court filed. Judgment entered for pl'ff on the case stated against the def't for the sum of twenty-five dollars and costs of suit. *Per cur.* (See opinion filed.)

Debt, $25.00.

Int. May 12, 1890.

B, p. 396.

Judgment.

A. B. EDSON, *Pro.*

And now, May 30, 1890, the defendant appeals from the judgment of said court in above case to the supreme court of Pennsylvania. (See paper filed.)

May 30, 1890.—Recognizance in the sum of one hundred dollars, with Samuel P. Boyer and Clarence R. Henderson as sureties, filed.

June 4, 1890.—Certiorari from supreme court filed.

Certiorari certified from the record November 26, 1890.

A. B. EDSON, *Pro.*

[SEAL.]

16 *Transcript from the City Recorder of Titusville.*

Transcript from the city recorder of the city of Titusville.

THE CITY OF TITUSVILLE } No. —
v.
J. W. BRENNAN. }

Costs

Recorder	$4 15
McGrath, svg. capais & M.	62
	$4 77

CITY OF TITUSVILLE, *ss:*

Daniel McGrath, chief of police *on* said city, being duly sworn, says that within one week last past the said defendant has canvassed and solicited orders for pictures in said city without having taken out a license from said city, and without having paid a license tax as required by an ordinance of said city entitled "An ordinance to provide for the levy and collection for general revenue purposes of annual license taxes in the city of Titusville," approved June 25th, 1888, and in violation of said ordinance.

(Signed) D. McGRATH.

Sworn to this 25th May, A. D. 1889.

(Signed) W. M. DAME,
City Recorder.

Warrant issued. G. A. Chase, Esq., city solicitor, appears for pl'ff.

17 Warrant served, and def't in court, and upon the complaint being read to him he answers that he has solicited and taken orders for pictures in said city without having taken out a city license therefor.

Thereupon it is adjudged that for such violation he forfeit and pay to the plaintiff the sum of twenty-five dollars as a fine for such violation, with costs of suit, said fine being imposed in conformity to section 12 of said ordinance, which provides "that all persons canvassing or soliciting within said city orders for goods, books, paintings, wares, or merchandize of any kind, or persons delivering such articles under orders so obtained or solicited shall be required to procure from the mayor a license to transact said business, and shall pay to the said treasurer therefor the following sums, according to the time for which said license shall be granted, viz: For one day, one dollar and fifty cents; one week, $5.00; three months,

$10.00; one year, twenty-five dollars; provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers residing or doing business in said city;" and also in conformity to section 18 of said ordinance, which provides "that any person or persons failing to obtain a license as required by this ordinance shall, upon conviction thereof before any majestrate, alderman, or justice of the peace of said city, forfeit and pay a fine not exceeding one hundred dollars nor less than the amount required for a license to such per-
18 son or persons, together with twenty per cent. added as a penalty, with costs of suit, and in default of payment thereupon shall undergo a confinement in the city or county prison for a period not exceeding ninety days or perform hard labor upon the streets or elsewhere in said city not exceeding such period."

Judgment is therefore entered in favor of said plaintiff and against said defendant for said sum of twenty-five dollars, with costs of suit.

And now, upon application of Sherman & Grumbine, who appear for defendant, and for the purpose of trial upon the merits, judgment opened and trial fixed for May 25th, 1889, at 2 o'clock p. m.

E. A. Coleman acknowledges himself bound to the plaintiff in the sum of fifty dollars as bail, conditioned for the appearance of defendant at said adj-urned day.

May 25th, 1889.—Defendant in court and pleads not guilty.

The defendant by attorneys admit that defendant has solicited orders for pictures within said city (within the time set forth in the complaint) of others than manufacturers and licensed merchants or dealers residing or doing business in said city without a license, but solely as the agent of J. A. Shepherd, a manufacturer and dealer in and a resident of the city of Chicago, in the State of Illinois.

Def't sworn and deposes as follows:

"I am selling pictures and taking orders therefor for
19 J. A. Shepherd, of No. 289 Wabash avenue, in Chicago, in the State of Illinois. I solicit orders for pictures and sent the order to Shepherd. I solicit orders for pictures and sent the orders to Shepherd. I solicit by sample and have a sample picture with me. After getting an order I send it to the house, and when the pictures are finished I deliver them. I am traveling now in the State of Penna. for Shephard. His place of business and manufactory are there. He has other agents out in other States.

Cross X:

I work on a salary and a commission. I get a commission on my collections. I get a weekly salary besides. The business is that of enlarging portraits and framing them. I sell all through the State, and have sold here in Titusville from house to house without taking out a city license.

Redirect:

Have been in business for Shephard about five weeks.

Re X:

Don't now sell for other parties nor solicit for other parties. Don't sell any other goods than he manufactures. Don't know of my own knowledge that he has a store where he sells goods other than of his own manufacture.

Redirect:

The man I work for does business at Chicago. I receive letters from there and send orders to him there.

Decision reserved until May 29th, 1889, at 10 o'clock a. m.

And now, May 29th, 1889, 10 o'clock a. m.—

Upon clear consideration of the evidence, it is adjudged
20 that the ordinance of the city of Titusville, entitled "An ordinance to provide for the levy and collection for general revenue purposes of annual license taxes in the city of Titusville, approved June 25th, 1888," has been violated by said def't, in that he did canvass and solicit orders for pictures from house to house in said city without having paid the license tax as required by said ordinance and within the time mentioned in said complaint.

The said defendant is guilty of such violation and is convicted thereof, and, further, that as a fine and penalty therefor *be* forfeit and pay to the pl'ff the sum of twenty-five dollars, with costs of suit, and judgment is accordingly rendered against said def't and in favor of said pl'ff for said sum of twenty-five dollars, with costs of suit.

I certify that the foregoing is a true transcript of the proceedings had before me in the above suit and of record on my docket.

WALDRON M. DAME,

[SEAL.] *City Recorder of the City of Titusville.*

CRAWFORD COUNTY, *ss:*

J. W. Brennan, the defendant, being sworn, says that he is advised and verily believes that he is not liable to the plaintiff for a license tax or penalty in the within-stated action for the reason that
21 he is solely the agent of J. A. Shephard, a manufacturer and merchant residing and doing the business in the city of Chicago and State of Illinois, who employs affiant to solicit orders for pictures and frames to be shipped from Chicago, Illinois, to points in the State of Pennsylvania, to those purchasing, by railroad, express, or freight.

J. W. BRENNAN.

Sworn and subscribed before me this 29th day of May, 1889.

SAMUEL GRUMBINE,

[SEAL.] *Notary Public.*

Endorsement: No. 26. Sept. term, 1889. City of Titusville *vs.* J. W. Brennan. Transcript from the city records of Titusville. June

3, 1889, appeal allowed upon payment of all costs before the recorder, and, upon entering into bail in the sum of one hundred dollars for costs, appeal to be entered within ten days. *Per cur.* A. B. Edson, pro.

CITY OF TITUSVILLE
vs.
J. W. BRENNAN.

JUNE 4, 1889.

Rec'd from def't four and $\frac{78}{100}$ dollars, cost on recorder's docket in above case.

W. M. DAME,
City Recorder.

[SEAL.]

22 *Bond of Defendant on Appeal and Receipt for Costs Before Recorder.*

In the Court of Common Pleas of Crawford County.

CITY OF TITUSVILLE
vs.
J. W. BRENNAN. } No. 26. Sept. Term, 1889.

Appeal by defendant from judgment of W. M. Dame, Esq., city recorder.

Know all men by these presents that we, J. W. Brennan and A. S. Ralston, are held and firmly bound unto the City of Titusville in the sum of one hundred dollars; to the payment of which we do bind ourselves and each of us, our and each of our heirs, executors, and administrators.

Witness our hands and seals this 4th day of June, 1889.

The condition of this obligation is, that whereas the above-named defendant, J. W. Brennan, has appealed to the court of common pleas of Crawford county from the decision of W. M. Dame, Esq., city recorder, and the court has allowed said appeal upon condition that the defendant enter into bond that he will pay all costs that may accrue in said cause:

Now, therefore, if the said J. W. Brennan shall pay all the costs that shall accrue in the above case which may be adjudged against him on said appeal, this obligation to be void, or else to remain in full force.

J. W. BRENNAN. [SEAL.]
A. S. RALSTON. [SEAL.]

23 Endorsement: No. 26. Sept. term, 1889. City of Titusville *vs.* J. W. Brennan. Bond of defendant *and* appeal and receipt for costs before recorder. Filed June 10, 1889. A. B. Edson, pro.

Testimony of J. W. Brennan.

CITY OF TITUSVILLE } Before W. M. Dame, City Recorder.
vs.
J. W. BRENNAN.

Testimony taken on the trial of the above cause before W. M. Dame, city recorder of the city of Titusville.

J. W. BRENNAN sworn:

I am selling pictures and taking orders therefor for J. A. Shephard, of No. 289 Wabash avenue, in the city of Chicago, in the State of Illinois. I solicit orders for pictures and send the orders to Shephard; I solicit by sample; have a sample picture with me. After getting an order I send it to the house, and when the pictures are finished I deliver them. I am traveling now in the State of Pennsylvania for Shephard; his place of business and manufactory is there; he has other agents out in other States.

Cross X:

I work on a salary and a commission; I get a commission on my collections; I get a weekly salary besides. The business is
24 that of enlarging portraits and framing them. I sell all through the State, and have sold here in Titusville from house to house without taking out a city license.

Redirect:

Have been in business for Shephard about five weeks.

Re X.:

Don't now sell for other parties nor solicit for the parties; don't sell any other goods than he manufactures; don't know as of my own knowledge that he has a store where he sell goods other than these of his own manufacture, or any store at all in Chicago.

Redirect:

The man I work for does business at Chicago. I receive letters from there from him, and send orders to him there.

NOTE.—Before taking the above testimony the def't personally and by counsel cause to be entered on the record the following:

"The defendant admits that he solicited orders for pictures within the city of Titusville to other than licensed merchants or dealers residing or doing business in said city, without a license, but solely as the agent of J. A. Shephard, a manufacturer and dealer in and resident of the city of Chicago, in the State of Illinois."

I certify that the foregoing is a true copy of the evidence, &c., taken before me in the trial of said cause and of record on
25 *in* my docket.

WALDON M. DAME,
[SEAL.] *City Recorder of City of Titusville.*

Agreement that Testimony be Read on Trial.

It is agreed that the foregoing notes of testimony, certified by W. M. Dame, city recorder of Titusville, as having been given by the defendant in the above-entitled case, may be read in evidence upon the trial or hearing of said case in the court of common pleas or upon any trial before any court hereafter as the deposition of the said J. W. Brennan with the same effects as if the said testimony had been regularly taken on notice under the rules of court and filed in said cause.

June 10, 1889.

SHERMAN & GRUMBINE,
Def'ts Att'ys.
GEO. A. CHASE, *Pff's Att'y.*

Endorsement: Titusville *v.* Brennan. Agreement about testimony of def'ts.

26 *Testimony of J. A. Shephard.*

In the Court of Common Pleas of Crawford County.

CITY OF TITUSVILLE
v.
J. W. BRENNAN. } No. 26. Sept. Term, 1889.

STATE OF ILLINOIS,
County of Cook, } *ss:*

J. A. Shephard, being sworn, says: I reside in the city of Chicago, in the State of Illinois, and am a citizen of said State. I am engaged in the business of manufacturing picture frames and making portraits in said city of Chicago, at No. 296 Wabash avenue, and selling them in other States of the Union. In carrying on this business I employ agents to whom I pay salaries and commissions upon sales made by them. I send these agents into other States and they solicit orders for my goods, which orders these agents transmit to me at Chicago. I then ship the goods ordered from Chicago, in the State of Illinois, to the place where the purchaser resides. These shipments are usually made by express and the money collected by the express companies and sent to me at Chicago.

J. W. Brennan, whom I am informed and believe is the defendant in the above-entitled action, was one of my agents for soliciting orders for my goods and selling the same in the manner before stated. He was sent by me to Titusville, in the State of
27 Pennsylvania, to act for me in the matter of business stated, and did so act, and was engaged in said business for me at Titusville at the time he was arrested and fined. Brennan and some of my other agents sometimes deliver the pictures and frames which I make and sell and sometimes collect the money for them and remit to me.

JOSEPH A. SHEPARD.

Sworn and subscribed before me this 19th day of July, 1889, at Chicago, in the county of Cook and State of Illinois. Witness my hand and official seal.

[SEAL.] PHILIP A. HOYNE,
A Commissioner of Deeds for the State of Pennsylvania in Chicago, Illinois.

Agreement that Testimony be Read on Trial.

July 29th, 1889, it is agreed that the attached and foregoing affidavit of J. A. Shephard, sworn before Philip A. Hoyne, a commissioner for Pennsylvania residing at Chicago, Illinois, may be read in evidence upon hearing on trial of the case *at* The City of Titusville *vs.* J. W. Brennan, in the court of common pleas of Crawford county, Pa., or in any other court, as the deposition of the said
28 J. A. Shepard, with the same effect as if the said testimony had been regularly taken on commission under the rules of court and filed in said cause.

It is further agreed that the facts stated in the foregoing attached papers are agreed to be the facts in the case, and the cause shall be submitted to the court, as upon a case stated, and argued without a jury.

SHERMAN & GRUMBINE,
Def'ts Att'ys.
GEO. A. CHASE, *Pl'ff's Att'y.*

Endorsement: No. 26. Sept. term, 1889. City of Titusville *vs.* J. W. Brennan. Testimony of J. W. Brennan and J. A. Shephard and agreement that the same may be read on trial; also agreement that facts stated shall be a case stated and argued before court without a jury. Filed August 1, 1889. A. B. Edson, pro.

Opinion of Common Pleas of Crawford County.

THE CITY OF TITUSVILLE } No. 26. Sept. Term, 1889. Case Stated.
v.
J. W. BRENNAN. }

Opinion.

29 This case was heard as a case stated *in* the facts exhibited on the record by written agreement of counsel.

The facts bring it within the ruling of the court in Warren Borough *vs.* Geer, 117 Pa., 207, and judgment is therefore entered for the pl'ff on the case stated against the defendant for the sum of twenty-five dollars and costs of writ.

PER CURIAM.

Endorsement: No. 26. Sept. term, 1889. City of Titusville *vs.* J. W. Brennan. Case stated. Opinion. Filed May 12, 1890. A. B. Edson, pro.

In the Court of Common Pleas of Crawford County.

CITY OF TITUSVILLE } No. 26. Sept. Term, 1889.
v.
J. W. BRENNAN. }

And now, May 30, 1890, the defendant appeals from the judgment of said court in above-entitled case to the supreme court of Pennsylvania.

SHERMAN & GRUMBINE,
Att'gs for Defendant.

CRAWFORD COUNTY, *ss:*

Samuel Grumbine, being duly sworn according to law, says that he is of counsel for said defendant in above case, and that the above appeal is not intended for delay.

SAMUEL GRUMBRINE.

Sworn to and subscribed before me this 30th day of May, 1890.
A. B. EDSON, *Proth'y.*

30 *Recognizance.*

In the Supreme Court of Pennsylvania, Eastern District.

CITY OF TITUSVILLE } Appeal by Defendant from the Judgment of the Court of Common Pleas for the County of Crawford, of September Term, 1889, No. 26.
v.
J. W. BRENNAN. }

We, Samuel P. Boyer and Clarence R. Henderson, both of Titusville, Crawford Co., Pa., severally acknowledge to owe the above-named plaintiff the sum of one hundred dollars upon condition that the above-named defendant prosecute his appeal with effect, and, if the judgment be affirmed or the appeal be discontinued or non-prossed, that he pay the debt, damages, and costs adjudged or accruing upon such appeal and all other damages and costs that may be awarded upon such appeal and for the return to the court below of the record, with the remittitur, or else we will do it for him.

S. P. BOYER.
C. R. HENDERSON.

Taken and acknowledged this thirtieth day of May, A. D. 1890.
A. B. EDSON, *Proth'y.*

31 Endorsement: No. 26. Sept. term, 1889. City of Titusville *vs.* J. W. Brennan. Appeal by defendant to the supreme court of Pennsylvania and recognizance for debt, damages, and costs. Filed May 30th, 1890. A. B. Edson, proth'y. Sherman & Grumbine.

In the Court of Common Pleas of Crawford County.

CITY OF TITUSVILLE
v.
J. W. BRENNAN. } No. 26. Sept. Term, 1889.

It is agreed that the following facts are those found by the court from the testimony, and that the same be filed of record and attached to and sent up with the record to the Supreme Court with the same force and effect as if originally written out, signed, agreed to, filed, and passed upon by the common pleas of Crawford county at or before the argument of the *course* in said court:

Facts.

1. J. A. Shephard is a manufacturer of picture frames and maker of portraits, residing in Chicago, in the State of Illinois, of which State he is a citizen and in which city he has his manufactory and place of business.

2. In the prosecution of said business he employs agents who, under his direction, solicit orders for pictures and picture frames in the State of Pennsylvania and in other States of the Union, by going personally to residents and citizens of said State of
32 Pennsylvania and other States and exhibiting samples of his pictures and frames, *giving*, when necessary, from house to house in said State of Pennsylvania and other States.

3. The defendant, J. W. Brennan, was an agent of the said J. A. Shephard, employed by him to travel and solicit orders for said pictures and frames in the manner stated, upon a salary and also upon commission upon the amount of his sales, at the time of his arrest, May 25th, 1889, upon a warrant issued by the authorities of the city of Titusville, in the State of Pennsylvania.

4. Upon receiving orders for pictures and picture frames, the agents of the said J. A. Shephard forwarded the same to him at Chicago, in the State of Illinois, *when* the same were made, and from there shipped by said J. A. Shephard to the purchasers in Titusville, in the State of Pennsylvania, by railroad freight and express, and the price of said goods was collected and forwarded by the express companies and sometimes by the agents to said Shephard, at Chicago, in the State of Illinois. J. W. Brennan, the agent employed by J. A. Shephard, was engaged in conducting the business in the manner stated at the time of his arrest, May 25th, 1889. The said J. W. Brennan, at the time of his arrest and before, had not been otherwise employed than as stated, and was acting solely for the said Shephard.

5. The city of Titusville had enacted an ordinance, in force at the date of the arrest of said J. W. Brennan, which in the twelfth section thereof provides in words and figures as follows:
33 "That all persons canvassing or soliciting within said city orders for goods, books, paintings, wares, or merchandize of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the mayor a

license to transact said business, and shall pay to the said treasurer therefor the following sums, according to the time for which said license shall be granted, viz: For one day, one dollar and fifty cents; one week, $5.00; three months, $10.00; one year, twenty-five dollars; provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacture-s or licensed merchants or dealers residing and doing business in said city."

And the said ordinance further provides, in the 18th section thereof, as follows:

"That any person or persons failing to obtain a license as required by this ordinance shall, upon conviction thereof before any majistrate, alderman, or justice of the peace of said city, forf-it and pay a fine not exceeding one hundred dollars, nor less than the amount required for a license to such persons or persons, together with twenty per cent. added as a penalty, with costs of suit; and in default of payment thereof shall undergo a confinement in the city or county prison for a period not exceeding ninety days, or perform hard labor on the streets or elsewhere in said city not exceeding such period."

6. At the time of his arrest the defendant Brennan was not and had not been selling by sample to manufacturers or licensed merchants or dealers residing in said city of Titusville and was not, within the provision of the 12th section of said ordinance, soliciting to such excepted persons.

7. The defendant, J. W. Brennan, at the time of his arrest had not obtained a license as required by said ordinance, and had not paid to the treasurer of the city of Titusville the license fee provided by said ordinance.

8. The defendant was arrested, tried, convicted, and sentenced to pay a fine of $25.00 and costs of suit, under said ordinance, on the 29th day of May, 1889, before W. M. Dame, city recorder of the city of Titusville.

If the court should be of opinion upon the facts stated that the defendant, J. W. Brennan, was liable to take out a license and pay the license fee provided by said ordinance, then judgment to be entered for the plaintiff, The City of Titusville, for $25.00 and costs of suit. If the court should be of opinion that said Brennan was not so liable, then judgment to be entered for the defendant, with costs of suit.

GEO. A. CHASE, *Att'y for Pl'ff.*
SHERMAN & GRUMBINE,
Att'ys for Def't.

Endorsement: No. 26. Sept. term, 1889. City of Titusville *vs.* J. W. Brennan. Case stated. Filed March 2, 1891. C. R. Slocum, pro.

35 *Opinion of Common Pleas of Crawford County.*

In the Court of Common Pleas of Crawford County.

CITY OF TITUSVILLE } No. 26. September Term, 1889.
v.
J. W. BRENNAN. }

Opinion.

And now, to wit, May 20, 1890, this case came on to be tried on an appeal by the defendant from the judgment of Simon Strouse, Esquire, and was heard, by agreement of counsel, on the evidence on file, taken before said justice, and, upon consideration had of the said evidence, it is adjudged that the defendant is indebted *in* the plaintiff in the sum of $25 for hawking and peddling in the city of Titusville, Pa., without a license, in violation of the ordinance of said city recited in the transcript of the proceedings before said justice; therefore judgment is entered in favor of the plaintiff and against the defendant for $25 and costs.

PER CURIAM.

Endorsement: No. 26. September term, 1889. City of Titusville *vs.* J. W. Brennan.

36 *Writ of Certiorari.*

EASTERN DISTRICT OF PENNSYLVANIA, } ss:
City and County of Pennsylvania, }

The Commonwealth of Pennsylvania to the justices of the court of common pleas of county of Crawford, Greeting:

[SEAL] We, being willing for certain causes to be certified of the matter of the appeal of J. W. Brennan from the judgment in No. 26, September term, 1889, wherein City of Titusville was plaintiff and said appellant was defendant, before you or some of you depending, do command you that the record and proceedings aforesaid, with all things touching the same, before the justices of our supreme court of Pennsylvania, at a supreme court to be holden at Philadelphia, in and for the eastern district, the fourth Monday of April next, being the 16th Monday following the first Monday of January, 1891, so full and entire as in our court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable Edward M. Paxson, doctor of laws, chief justice of our said supreme court, at Philadelphia, the thirty-first day of May, in the year of our Lord one thousand eight hundred and ninety.

CHAS. S. GREENE,
Prothonotary.

37 Endorsement: 26. Sept. T., 1889, C. P. Crawford. No. 121. July term, 1890, supreme court. City of Titusville *v.* J. W. Brennan, appellant. Certiorari to the court of common pleas for the county of Crawford, returnable the fourth Monday of April, 1891. Rule on the appellee to appear and plead on the return day of the writ. Filed June 4th, 1890. A. B. Edson, pro. Filed in supreme court April 6, 1891. Roger Sherman, Samuel Grumbine.

To the honorable judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the eastern district:

The record and process and all things touching the same, so full and entire as before us they remain, we certify and send as within we are commanded.

JOHN J. HENDERSON, *P. J.* [L. S.]

Service of the within writ accepted June 3, 1890.

GEO. A. CHASE,
Att'y for Appellee.

38 *Assignments of Error.*

In the Supreme Court of Pennsylvania.

CITY OF TITUSVILLE
vs.
J. W. BRENNAN. } No. 121. July Term, 1890.

Appeal by defendant from the judgment of the court of common pleas of Crawford county, at No. 26, Sept. term, 1889.

Specifications of error.

1. The court erred in entering judgment for the plaintiff upon the facts agreed upon in the stated case.

2. The court erred in entering judgment for the plaintiff upon the facts shown by the evidence.

3. The court erred in entering judgment for the plaintiff upon the statement of the case made by the court and in finding the defendant was liable for hawking and peddling.

SHERMAN & GRUMBINE,
Att'ys for Appellant.

Endorsement: No. 121. July term, 1890. City of Titusville *v.* J. W. Brennan. Assignments of error. Filed in supreme court April 28th, 1891.

39 *Opinion of Supreme Court of Pennsylvania.*

CITY OF TITUSVILLE
v.
BRENNAN.
From the Common Pleas of Crawford County.

Filed October 5th, 1891.

WILLIAMS, *J.*:

There are two questions presented by this record. The first is whether the court below was correct in finding as a fact that the defendant was a peddler. The other is whether, as a matter of law, the defendant is engaged in interstate commerce and is under the protection of the National Government. If the defendant is a peddler, the law is settled in this State that he is not above the obligation to conform to the requirements of the laws of the State regulating the business of peddling. The legislature has pronounced his business to be injurious in tendency, and has forbidden any one to engage in it, except under certain regulations intended to bring such person under the notice of the local authorities and afford some little security for his good behavior. These regulations have been made in the exercise of the police power, to protect the public from fraud and violence, and they are constitutional and valid. Commonwealth *vs.* Gardner, 133 Pa., 284. But what is the defendant's
40 business as gathered from the facts appearing in the case stated? He certainly is not an importer or a wholesale dealer, supplying the trade in this State from a source of supply beyond the State lines, in original or unbroken packages. He is not a "drummer" or traveling agent acting as an intermediary between the importer or the wholesale and the local trade. Although he carries a few articles on his back or in his wagon, he would hardly ask us to hold that he was engaged in interstate transportation. He comes into this State, according to the case stated, in order that he may here engage in the business of going from house to house to sell frames and pictures for a dealer who resides in another State. He hunts his customers in their own homes. To the inmates of the homes into which he intrudes himself he exhibits what he alleges to be a sample of the goods he is prepared to supply. The only apparent difference between him and the ordinary pack peddler is that the peddler produces the precise article he offers for sale, and delivers it to the purchaser on the spot, while the defendant produces from his pack a sample, the customer buys on his assurance that the article will be like it, and the article is subsequently delivered by some itinerant or by express, if it is delivered at all. There is in each case the same intrusive, domiciliary visitation, the same relentless personal pursuit of a purchaser, the same practiced and persistent itinerant salesman adroitly pressing his wares on the attention of those who neither need nor wish for them, but who are unable to resist the wiles or penetrate the deceptions practiced upon them. The business
41 of both is in general character the same. Whether the dif-

ference in mode of delivery should distinguish the one from the other is, in this case, a matter of no consequence whatever. The ordinance under which this suit was brought is not directed against peddlers by name, but against a particular method of making sales of goods. It forbids any person, whether a citizen of this or any State, to engage in the business of canvassing or soliciting within the city of Titusville for orders for goods, books, paintings, wares, or merchandize of any kind, without first obtaining a license from the mayor for that purpose. It does not discriminate against citizens of other States or goods grown or manufactured in other States. It does not wholly prohibit the exercise of any trade or business. It regulates a particular business in such a manner as to bring those who engage in it under the notice and, so far as possible, under the supervision of the police authorities of the city. Whether the defendant is a peddler is therefore not the question to be settled. It is whether the defendant is engaged in the business described in the ordinance. If he is, and the agreed facts show clearly that he is, then he must obey it or show that it is not binding on him. We do not understand that he denies the power of the city to pass such an ordinance upon the authority of any of our own cases. The case of Warren Borough *v.* Geer, 117 Pa., 207, involved the validity of an ordinance drawn in almost the identical words found in this one. The court below held that the borough had not power to pass such an ordinance, because it interfered with the exercise of a common right. This court held otherwise,
42 and distinctly asserted the power of the borough to make and the duty of the courts to enforce the ordinance. But it is urged that the United States courts have held another doctrine, and that we should put ourselves in harmony with the law as held by them. We recognize the duty to which our attention is thus called and shall discharge it with great pleasure wherever we find ourselves in conflict with the decisions of the Supreme Court of the U. S. upon this or any other subject. We are thus brought to consider the so-called "Federal question:" the question whether the man who sells ready-made clothing, pinch-back jewelry, picture frames, or other articles, from house to house, by personal solicitation addressed to one whom he has brought to lay, in the privacy of his or her own home, is engaged in interstate commerce, and therefore superior to the police power of the States. We shall not undertake a definition of interstate commerce. It is, perhaps, too early to attempt it. But the Supreme Court of the U. S. has provided us with abundant authority upon the real question we have to consider, which is whether the business of the defendant is subject to the police power. In the Beer Company *v.* Mass., 97 U. S., 25, that court laid down the broad proposition that "all rights are held subject to the police power of the State." In the course of a very satisfactory discussion of the subject by the learned justice delivering the opinion of the court, this language is employed: "Whatever differences of opinion may exist as to the extent and boundaries of the police power, and how difficult it may be to render a satisfactory definition of it, there seems to be no doubt that

it does extend to the protection of the lives, health, and
13 property of the citizen, and to the preservation of good order and the public morals. The legislature cannot by any contract divest itself of the power to provide for those objects. They belong emphatically to that class of objects which demand the application of the maxim *Salus populi suprema lex*." In Mugler *v.* The State of Kansas a law which did not regulate but absolutely prohibited the manufacture and sale of liquors as in Kansas was sustained as a valid exercise of the police power. To the same effect is Foster *vs.* Kansas, 112 U. S. Equally conclusive upon this point are the oleomargarine cases. This State forbade both the manufacture and sale of that commodity except under restrictions which were destructive to the business. We held the law valid as an exercise of the police power, and on appeal the Supreme Court of the U. S. affirmed the decision. The fact that the article, the manufacture and a sale of which is regulated or prohibited, is made under the authority of letters patent granted by the U. S. does not prevent the exercise of the police power of the States. In Patterson *v.* Kentucky, 97 U. S., 501, this question was raised, and it was held that letters patent confer no new or independent right of sale, but secure an exclusive right in the discovery to the inventor or his representative. This right is incorporal, but "the use of the tangible property that comes into existence by the application of the discovery is not beyond the control of State legislature." On the other hand, it was distinctly held in Patterson *v.* Kentucky, "That the
14 right which the patentee or his assignee possesses in the property created by the application of a patented discovery must be enjoyed subject to the complete and salutary power, with which the States have never parted, of so defining and regulating the sale and use of property within their respective limits as to afford protection to the many against the injurious conduct of the few." In Webber *vs.* Virginia, 103 U. S., 344, it was said by Justice Field, delivering the opinion of the court, that "the patent for a dynamite powder does not prevent the State from prescribing the conditions of its manufacture, storage, and sale so as to protect the community from the danger of explosion." But while the existence of the police power is thus clearly recognized by the courts of the United States, it must be exercised by means of laws that are equal and uniform in their operation. It must not be made use of as a means for discriminating between citizens of the different States. If it is, it loses its police character and becomes an unconstitutional trade regulation. Thus the State of Missouri passed a law prohibiting the sale of goods grown or produced or manufactured outside of that State without a license. To sell the same goods grown, produced, or manufactured within the State no license was required. This law was held to be void, because it was designed to operate against the citizens of other States and in favor of the citizens of Missouri. Welton *vs.* The State of Missouri, 91 U. S., 275. When the burden imposed is equal without regard to citizenship, similar laws have been upheld. Coe *vs.* Errel, 116 U. S., 517. If the defendant was an importer of frames, there could be no doubt of his right to ship them in origi-

nal bales or packages into the State and in that condition
45 to sell them. There is just as little doubt of his right to ship into the State one frame, for there is no law of the State which prohibits his sale of a single frame. What the law is aimed at is not the sale of frames at wholesale or at retail, but personal solicitation from house to house by canvassers, who, like peddlers, are here to-day and gone to-morrow, whose flippant representations cannot be stopped and whose frauds cannot be punished, unless they are brought under the notice and to some extent under the control of the local authorities. What trades need to be restricted and forbidden to all who have not obtained a license is purely a legislative question. The sale of liquors, the keeping of a hotel, the running of a cab, the keeping of a lottery, the sale of lottery tickets, the practice of medicine, the manufacture of oleomargarine, peddling from house to house, and many other kinds of business have been the subject of regulation, restriction, or prohibition by an exercise of the police power of the several States. Where the courts have interfered in such cases it has been not to prevent the exercise, but to prevent the abuse of the police power and to see that its hand was laid impartially and without discrimination between States on the evil to be corrected. Whether the solicitation from house to house by itinerant venders or canvassers is an evil to be suppressed or reduced in its proportions by appropriate legislation is under ordinary circumstances, as we have said, a legislative question. If it was for us to determine, a glance at our own cases would determine
it. The books are full of cases arising out of the efforts of
46 those who have been defrauded to recover their money, to be relieved from their bonds or notes given under the influence of a bald fraud, or wheedled out of them under pretence that they were signing a receipt, an order, a promise to act as agent or the like. There is probably not a county in the Commonwealth into whose courts the victims of the frauds of travelling canvassers for Moris multicaulis trees, patent churns, hay-forks, washing-machines, self-hooking or self-unhooking whiffletrees, and a hundred more equally worthless things have not come by petition to open judgment or by affidavit of defence to an action seeking relief. It is the same story. A well-dressed, plausible stranger, with flattery and promise of enormous gains, induces some honest but inexperienced man to sign a paper promising to exhibit some worthless article left with him to his neighbors or to pay for it at a small price when he has sold it — a large one, or the like, and goes his way. Not long after some other stranger presents to the astonished victim his promissory note for one or two or five hundred dollars and demands payment. It next turns up in the hands of some note-shaver and then litigation begins. The loss to industrious, well-meaning people by these practices reaches many thousands of dollars every year. It goes to support in idleness a class of swindlers who should be in prison. The subject is as fairly within the scope of police legislation as cheating by false pretenses or larceny by a bailee. We should as soon expect the thief who stole goods in one State to be sold in another to be protected under the interstate commerce

powers of the General Government as that the travelling
47 cheats who live by drawing the blood of the hard-working but too confiding farmers and mechanics should be so protected.

It may be that the defendant is honest and sells a good frame for an honest price. There are no doubt some honest peddlers and canvassers, worthy men and women, who are needy and find this a convenient way to earn money. The trouble in such cases is that they are in a business that men and women — are not honest employs as a means of swindling, and that the business is therefore properly put under some regulations and restrictions that seem to them and that in their cases may really be unnecessary and burdensome. If they choose to embark in the sale of strong drink, or in the sale of goods as peddlers, or as canvassers, or of oleomargerine, they must take notice of the restrictions laid upon the business they select and comply with them.

The judgment is affirmed.

Endorsement: No. 121. July term, 1890. City of Titusville *v.* Brennan. From the com. pleas of Crawford county. Filed October 5th, 1891. Supreme court.

48 *Petition for Writ of Error to the Supreme Court of the United States.*

In the Supreme Court of Pennsylvania, Eastern District.

City of Titusville
vs.
J. W. Brennan. } No. 121. July Term, 1890.

To the honorable the chief justice of the supreme court of Pennsylvania:

The petition of J. W. Brennan respectfully shows:

That your petitioner brought suit in the supreme court of Pennsylvania for the eastern district, to No. 121, July term, 1890, by appeal, in the nature of a writ of error to a judgment rendered by the court of common pleas of the county of Crawford, in a certain action brought by the City of Titusville against J. W. Brennan, your petitioner, at No. 26, September term, 1889, by judgment, in which action it was decreed that your petitioner pay to the said city of Titusville twenty-five dollars and costs of suit.

That on the 5th day of October, 1891, the supreme court of Pennsylvania, sitting at Pittsburgh, in said State and in the western district thereof, ordered that said judgment of the court of common pleas so rendered against your petitioner at No. 26, September term, 1889, be affirmed, at the costs of your petitioner, and on the 6th day of October, 1891, the said judgment of the supreme court of Pennsylvania was duly entered in the eastern district aforesaid.

That the said judgment of the supreme court of Pennsylvania

is the judgment of the highest court of said State and is
49 final.

That the said final judgment draws in question the validity of a statute of the State of Pennsylvania, approved May 23, 1889, which provides, by the first section thereof, that the city of Titusville, a city of the third class under said law, shall have power, *inter alia*, to levy and collect, for general revenue purposes, a license tax not exceeding one hundred dollars each, annually, on all hawkers, peddlers, produce or merchandize vendors, and also draws in question an authority exercised by the city of Titusville, a municipal corporation of said State of Pennsylvania, under said statute and under an ordinance of said city framed pursuant thereto, and alleged to be valid under said act of May 23, 1889, and under the laws of the State of Pennsylvania, which said ordinance provides, *inter alia*, "That all persons canvassing or soliciting within said city orders for goods, books, paintings, wares, or merchandize of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the mayor license to transact said business;" and, in the eighteenth section thereof, that any person failing to obtain said license shall, upon conviction before any majistrate, be fined not exceeding one hundred dollars; and the decision of the said supreme court of Pennsylvania was in favor of the validity of said statute and of the exercise of the said authority under the laws of said State by the said city of Titusville.

That the said judgment and decision of the supreme court
50 of Pennsylvania was in contravention of the third clause of the eight- section of the first article of the Constitution of the United States, which provides, *inter alia*, that Congress shall have power to regulate commerce among the several States, the said defendant, your petitioner, being engaged in carrying on commerce among the States, within the meaning of said clause of the Constitution, and the judgment aforesaid having been rendered against him for the amount of a fine inflicted upon him for failing to take out a license under said statute of Pennsylvania, ordinance of said city of Titusville, and authority so exercised under said statute.

That the said court of common pleas of the county of Crawford, of said State of Pennsylvania, and the said supreme court of Pennsylvania had no jurisdiction to pronounce said judgment against your petitioner, but the said jurisdiction is by the Constitution exclusively vested and cognizable by the United States and the Federal courts, and the said statutes, ordinances, and authority were in contravention of said section of the Constitution; wherefore the said judgments are void.

Your petitioner therefore prays for the allowance of a writ of error to the supreme court of Pennsylvania, to the end that the said judgment of said court may be re-examined and reversed or affirmed in the Supreme Court of the United States.

And he will ever pray.

J. W. BRENNAN.

By his attorneys, SHERMAN & GRUMBINE.

51 STATE OF PENNSYLVANIA, } ss:
County of Crawford, }

Roger Sherman, being sworn, says that he is one of the attorneys of record of J. W. Brennan, the petitioner, authorized to make this petition in his behalf and familiar with the facts, and that the statements of fact made in the foregoing petition are true, as he verily believes.

ROGER SHERMAN.

Sworn and subscribed before me this 21st day of December, 1891.

SAMUEL GRUMBINE,
Notary Public.

[SEAL.]

Endorsement: No. 121. July term, 1890. City of Titusville *vs.* J. W. Brennan. Petition for writ of error from Supreme Court of the United States to the supreme court of Pennsylvania. Filed January 2, 1892. In supreme court, January 2, 1892. Writ refused. Edward M. Paxson, chief justice.

52 UNITED STATES OF AMERICA, } ss:
State of Pennsylvania, }

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania, eastern district, do hereby certify that the foregoing record, pages A to H and 1 to 41, inclusive, is a true and faithful copy of the record and proceedings of the supreme court of the State of Pennsylvania, eastern district, in a certain suit therein pending, wherein City of Titusville, plaintiff, was appellee, and J. W. Brennan, defendant, was appellant.

Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said supreme court of the State of Pennsylvania, the 1st day of March, 1893, and in the one hundred and seventeenth year of the Independence of the United States.

CHAS. S. GREENE,
Prothonotary of the Supreme Court of Pennsylvania, Eastern District.

53 I, James P. Sterrett, chief justice of the supreme court of Pennsylvania, do hereby certify that Charles S. Greene was at the time of signing the annexed attestation and now is prothonotary of the said supreme court of Pennsylvania in and for the eastern district, to whose acts as such full faith and credit are and ought to be given, and that the said attestation is in due form.

In witness whereof I have hereunto subscribed my name this seventh day of March, one thousand eight hundred and ninety-three.

JAMES P. STERRETT,
Chief Justice, &c.

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do certify that the Honorable James P. Sterrett, by whom the foregoing certificate was made and given, was at the time of making and giving the same and is now chief justice of the supreme court of Pennsylvania, to whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, and that his signature thereto subscribed is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court of Pennsylvania in and for the eastern district, at Philadelphia, this seventh day of March, one thousand eight hundred and ninety-three.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

Endorsed on cover: Case No. 15,272. Pennsylvania supreme court. Term No., 902. J. W. Brennan, plaintiff in error, *vs.* The City of Titusville. Filed March 10th, 1893.

153 US 289

153 US 289

Office Supreme Court U. S.
FILED.
OCT 27 1893
JAMES H. McKENNEY,
CLERK.

CASE No. 15,272.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1893.

TERM No. 902.

J. W. BRENNAN, *Plaintiff in Error*

Versus

THE CITY OF TITUSVILLE.

In Error to the Supreme Court of Pennsylvania.

BRIEF OF PLAINTIFF IN ERROR.

ROGER SHERMAN,
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TITUSVILLE, PA.

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I. STATEMENT.

On the 29th day of May, 1889, and for several years prior to that date, and since, Joseph A. Shepard

was a manufacturer of picture frames, and a maker of portraits in the City of Chicago and State of Illinois, in which place was his factory and place of business. *Record p.* 16.

At the date stated, and for some time before, Mr. Shepard had employed agents to go into other of the United States to solicit orders for portraits and frames by going personally to citizens and residents of such other states, soliciting their custom, and exhibiting samples of his goods.

Among the agents so employed by Mr. Shepard was J. W. Brennan, the plaintiff in error and defendant below, to whom he paid a salary and also a commission upon the amount of his sales. *Record, page* 16.

The agents so employed, including the plaintiff in error, Brennan, upon receiving orders for pictures or picture frames, forwarded the same to their principal Mr. Shepard at Chicago, where they were manufactured and from whence they were sent by public carriers into other states. They were so shipped sometimes by freight and sometimes by express, the express companies at times acting as agents for Shepard, collecting and remitting the agreed price, and sometimes the agents would themselves deliver the goods and collect the price remitting to their principal in Chicago. *Record, page* 16.

While J. W. Brennan, the plaintiff in error, was acting as agent for Joseph A. Shepard, in the business stated, and in the manner above set forth he was arrested upon a warrant issued by a magistrate, called City Recorder, at the instance of the City of Titusville,

in the State of Pennsylvania, an incorporated city of the third class, under the laws of said state, upon an information charging him with having "canvassed and solicited orders for pictures in said city without having taken out a license from said city, and without having paid a license tax as required by an ordinance of the city." *Record, page 8.*

The magistrate, before whom the defendant below was taken, adjudged him guilty of violating the ordinance of the city in that he "had solicited and taken orders for pictures in said city without having taken a license therefor." *Record page 8.* And entered judgment against him and in favor of the City of Titusville for the sum of twenty-five dollars, with costs of suit *Record pages 9 and 10.*

The ordinance of the City of Titusville, Pennsylvania, under which this proceeding was had is printed on pages 1, 8, 17 and 25.

The law of the State of Pennsylvania, which is claimed to be the authority for the said ordinance is that of May 23, 1889. Pamphlet Laws of 1889, page 277, entitled "An act providing for the incorporation and government of cities of the third class." By Article V, Section 1, Clause IV, of said act, power is given to said cities "To levy and collect for general and revenue purposes, a license not exceeding $100 each annually, on all * * * * * * hawkers, peddlers, produce or merchandise, vendors, * * * and to regulate the collection of the same."

The plaintiff in error, Brennan, appealed from the judgment rendered by the magistrate, to the Court of

Common Pleas, of the County of Crawford, in the State of Pennsylvania. *Record pages* 10 *and* 11.

It was agreed that the evidence taken by the City Recorder, as supplemented by the affidavit of Joseph A. Shepard, should be the evidence from which the facts were to be ascertained, and that a jury should be dispensed with and the cause heard as upon the agreed state of facts as upon a case stated. *Record pages* 13 *and* 14. Afterwards upon the suggestion of the Judge of the Court of Common Pleas, a formal agreement for a stated case was made and filed in accordance with a customary practice in the courts of Pennsylvania. This is printed upon pages 16 *and* 17 *of the Record.*

The Court of Common Pleas entered judgment upon the case stated in favor of the City of Titusville, against plaintiff in error, Brennan, for $25 and costs of suit. *Record page* 14.

From this judgment of the Court of Common Pleas the defendant, Brennan, appealed to the Supreme Court of Pennsylvania. *Record page* 15.

The Supreme Court of Pennsylvania, afterwards, on the 5th day of October, 1891, entered final judgment against the defendant below and plaintiff in error by affirmance of the judgment of the Common Pleas. *Record pages* 20 *to* 24 inclusive, where is printed the opinion of the Supreme Court of Pennsylvania.

In all of these proceedings, and in the presentation of the case of the plaintiff in error to the courts of Pennsylvania, his contention was that

he was an agent, sent from the State of Illinois to the State of Pennsylvania by a citizen of the former state, and a dealer there in merchandize of his own manufacture, to solicit orders for the purchase of said articles of merchandize, and that his principal being engaged in lawful interstate commerce, he, as agent, was not liable to the City of Titusville for the license tax. *Record, page* 9, 10, 12, 13, 16, 19, 21.

After entry of judgment against him by the Supreme Court of Pennsylvania, the plaintiff in error then presented his petition for allowance of a writ of error directed to the Supreme Court of Pennsylvania, which having been granted, the record has been removed to this court, and by agreement of counsel filed the cause is submitted upon printed briefs.

II. ERRORS ASSIGNED.

FIRST.

The Supreme Court of Pennsylvania erred in deciding (*Record, page* 20);

"There are two questions presented by this record. The first is whether the court below was correct in finding as a fact that the defendant was a peddler. The other is, whether, as matter of law the defendant is engaged in interstate commerce and is under the protection of the national government. If the defendant is a peddler, the law is settled in this state that he is not above the obligation to conform to the requirements of the laws of the state regulating the business of peddling. The legislature has pronounced his busi-

ness to be injurious in tendency, and has forbidden any one to engage in it except under certain regulations intended to bring such person under the notice of the local authorities and offered some little security for his good behavior. These regulations have been made in the exercise of the police power, to protect the public from fraud and violence, and they are constitutional and valid."

SECOND.

The Supreme Court of Pennsylvania erred in deciding, (*Record, page* 20);

"He certainly is not an importer or a wholesale dealer, supplying the trade in this state from a source of supply beyond the state lines, in original or unbroken packages. He is not a 'drummer' or traveling agent, acting as an intermediary between the importer or the wholesale or local trade."

THIRD.

The Supreme Court of Pennsylvania erred in deciding, (*Record, page* 21);

"Whether the defendant is a peddler is therefore not the question to be settled. It is whether the defendant is engaged in the business decribed in the ordinance. If he is, and the agreed facts show clearly that he is, then he must obey it or show that it is not binding upon him."

FOURTH.

The Supreme Court of Pennsylvania erred in deciding, *Record, page* 24);

"What the law is aimed at is not the sale of frames

at wholesale or at retail, but personal solicitation from house to house, by canvassers, who like peddlers are here to-day and gone to morrow, whose flippant representations cannot be stopped, and whose frauds cannot be punished, unless they are brought under the notice and to some extent under the control of the local authorities."

FIFTH

The Sapreme Court of Pennsylvania erred in deciding, (*Record, page* 24);

"It may be that the defendant is honest and sells a good frame for an honest price. There are no doubt some honest peddlers and canvassers, worthy men and women who are needy, and find this a convenient way to earn money. The trouble in such cases is that they are in a business that men and women (who) are not honest employ as a means of swindling, and that the business is therefore properly put under some regulations and restrictions that seem to them, and that in their cases may really be, unnecessary and burdensome. If they choose to embark in the sale of strong drink, or in the sale of goods as peddlers or canvassers, or of oleomargarine, they must take notice of the restrictions laid upon the business they select and comply with them. The judgment is affirmed."

SIXTH.

The Supreme Court of Pennsylvania erred in entering judgment affirming the judgment of the Court of Common Pleas, of the County of Crawford, in the State of Pennsylvania, which judgment was: "And

judgment is therefore entered for plaintiff on the case stated against the defendant for the sum of $25 and costs of suit. *Per Curiam.*" *Record page* 14. And the judgment of the Supreme Court of Pennsylvania being as follows: "October 5, 1891. The judgment is affirmed; opinion by Williams, J."

III. BRIEF.

The judgment of the Supreme Court of Pennsylvania seems to rest upon the assumption that the law of that State, under which the ordinance of the City of Titusville was enacted, is an exercise of the police power, and designed to protect the public from the baneful effects of "The business of canvassing or soliciting within the City of Titusville for goods, books, paintings, wares or merchandise of any kind." *Record page* 21.

Yet the Act of Assembly of the Commonwealth of Pennsylvania does not sustain this position. So much of the said act as relates to the question under consideration, is found upon page 287 of the laws of Pennsylvania for the year 1889, being Clause IV of Section 3 of Article V, of the Act of May 23, 1889, Pamphlet Laws 277-333, entitled "An Act providing for the incorporation and government of cities of the third class." The only material and relative parts are as follow:

ARTICLE V.

CORPORATE POWERS.

"*Section* 3. Every city of the third class in its corporate capacity, is authorized and empowered to

enact ordinances for the following purposes, in addition to the other powers granted by this act."

* * * * * *

IV. "To levy and collect, for general revenue purposes, a license tax not exceeding $100 each, annally, on all auctioneers, contractors, druggists, *hawkers, peddlers*, produce or *merchandise vendors*, bankers, brokers, pawnbrokers, *merchants of all kinds*, * * * and to regulate the collection of the same."

This act authorizes the levy and collection of a tax for general revenue purposes, and contains no prohibition of hawking or peddling, as a means of selling, and inflicts no penalties as punishment for such selling, as did the law of Pennsylvania of April 17, 1846, Pamphlet Laws 364, upon which was based the decision of the Supreme Court of Pennsylvania in the case of *Commonwealth vs. Gardner*, 133 *Penna.* 284. There is nothing whatever in this act which indicates any proposed exercise of police power. Nor in any preceding acts regulating the affairs of cities. The act of 1889 before quoted, preserves the ordinances passed under former acts, and the clause recited is a subsantial copy of the prior law of May 23, 1874. *P. L.* 239.

If we turn to the ordinance of the City of Titusville, (*Record pages* 8, 9, 16, 17) we find it to be entitled,

"An ordinance to provide for the levy and collection for general revenue purposes of annual license taxes in the City of Titusville."

And section 12 provides that

"All persons canvassing or soliciting within said city orders for goods, books, paintings, wares or merchandize of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the mayor a license to transact said business, and shall pay to the said treasurer therefor the following sums, according to the time for which said license shall be granted, viz: * * * *

This is not the prohibition or regulation of a noxious, injurious or immoral occupation. The penalty attached by Section 18 of the ordinance, (*Record page* 9) is not inflicted as a punishment for soliciting orders for merchandise, or delivering the same under orders obtained by soliciting or canvassing, but as a punishment for failing to obtain a license to do so, which license is a tax levied for general revenue purposes.

There is nothing here for the police power to operate upon, and no attempt to exercise it. While neither the law of Pennsylvania, the ordinance of the City of Titusville, the information printed on the *Record page* 8, the judgment of the municipal msgistrate, *Record pages* 8 *and* 10, nor judgment of the Court of Common Pleas, *Record page* 14, are aimed at the defendant as a "hawker or peddler," and he is nowhere nor in any manner charged with such offense, if indeed it be an offense, yet in a supplemental opinion filed by the Judge of the Court of Common Pleas (*Record page* 18) it is found that "The defendant is indebted to the plaintiff in the sum of $25 for hawking and peddling in the city of Titusville, Pa., without a license, in

violation of the ordinance of said city recited in the transcript of the procedings before said justice." (*Record, pages* 8 *and* 9.)

In order to uphold the idea of an exercise, in this instance, of the police power, it is sought to show that the plaintiff in error was a "peddler," or if not a peddler, that his occupation was so nearly allied to that of a peddler, as to call for stringent measures for the suppression of his business. This idea will be found in the opinion of the Supreme Court of Pennsylvania, printed in the record at the foot of page 20 and top of page 21, marginal paging 40 and 41.

The court there holds, as we understand the opinion, that while there is no practical difference between a person who solicits orders for goods by going from house to house and asking people to buy, exhibiting samples of his wares, which are afterwards sent to them by the dealer in another state, and a person who carries the wares about on his back, or in a wagon, and sells and delivers them to the purchasers at the time of the transaction, yet for the purpose of this case it matters not, as "The ordinance under which this suit was brought is not directed against peddlers by name, but against n particular method of making sales of goods."

It may be considered therefore as admitted that the plaintiff in error was not a hawker or peddler.

A hawker is one who offers wares for sale in the streets by outcry. He is a peddler who cries the wares he is selling as he goes.

A peddler is a person who goes about selling small

wares which he carries with him.

These are the definitions of the dictionary. See *Century*, *Webster*, *Worcester*. They are also the definitions of the courts. *Commonwealth vs. Gardner*, 133 *Penna. R.* 289. *Bouvier's Law Dictionary. City of Chicago vs. Bartu*, 100 *Ill. Rep.* 61. *Higgins vs. Rinker*, 47 *Tex. R.* 402.

A drummer or commercial traveler is not a "peddler," because he does not carry with him the goods sold. *Ex parte Taylor*, 58 *Miss. Rep.* 478.

If it be true as held in this case by the Supreme Court of Pennsylvania (*Record, page* 21). "That the ordinance is directed against a particular method of making sales of goods," then unless the occupation be unlawful, immoral or dangerous to the lives, limbs, health or comfort of persons, or the safety of property, the state cannot burden the business with penalties or taxation, if it is carried on in a lawful manner between citizens residing in different states.

That the business of this present plaintiff in error should have fallen under the displeasure of the Supreme Court of Pennsylvania, is unfortunate; but inasmuch as his calling appears to be lawful, honorable and honest, a decision that he must go to jail for pursuing it is in such flagrant derogation of common right, that, however humble his occupation, he is entitled to have it reviewed; for the business of canvassing and soliciting orders for pictures and frames, from house to house, is not unlawful. A more harmless occupation does not exist. It may be that some kinds of pictures, or some noisy and disturbing way of soliciting might

be properly the subject of public interference and regulation; but then it would be the noise and disturbance, and the improper character of the pictures which would be the cause of the prohibition and the penalty; it would not be the act of canvassing or soliciting of itself

The law of Pennsylvania, before quoted, enumerates "peddlers and hawkers" as subjects for municipal license taxation, and also names "merchandise vendors" and "merchants of all kinds," but does not name canvassers or solicitors by sample. The power was therefore lacking in the City of Titusville to tax the plaintiff in error unless as a "merchandise vendor." If he is a seller of merchandise, and he carries on that business as the agent of a citizen of the State of Illinois, exhibiting samples of his goods to a citizen of Pennsylvania and selling the articles to him, by contract afterwards to be performed by shipping them to the purchaser from Illinois to Pennsylvania, the business is clearly interstate commerce.

The principle is, that commerce between the citizens of different states of the United States, cannot be prohibited, burdened, taxed, hampered or controlled by any law of any state, and hence, as municipalities of the states derive their powers of legislation solely from the state governments, these cannot do anything relative to commerce between citizens of different states which the states themselves are powerless to perform. The kind of such commerce is immaterial to affect the principle, as is also the quantity of it.

On the other hand, the power of the state to regu-

late the sale within her limits of commodities injurious to public health, morals or peace, is recognized as existing, superior to the powers of congress to regulate commerce among the states; but the exercise of this power can begin only when the article sold ceases to be in the ownership of the citizen of another state. I s sale and delivery cannot be interfered with while it is in transit, nor can the owner or his agent be subjected to penalties for selling the goods made and owned by him in one state of the Union to a citizen in another state, either in person or by agent. Until the sale has been completed in the state to which the article has been imported, and it has thereby become mingled in the common mass of property within that state, there exists no power in the state, nor in any of her municipalities, to interfere, by any action, with the free exportation of the commodity.

This is the doctrine of the Supreme Court of the United States, in the case of Leisy vs. Hardin, 135 U. S. 100–124, following upon this point, Robins vs. Shelby Taxing District, 120, U. S. 497.

The punishment of mere peddlers is a different thing from interfering with the free interchange of commodities between a citizen of the State of Illinois, engaged in a lawful and respectable business, and citizens of the State of Pennsylvania, who wish to purchase the portraits he makes for them and the frames he puts about them. The manufacturer and dealer in Chicago, Mr. Shepard, to whom his business is important, would have a perfect right to come himself to Pennsylvania, go from house to house

if he chose, exhibit samples of his art, and receive orders for pictures, and then to go home, make the portraits and ship them by express to his patrons, and collect the pay for his labor, skill and material. In so doing he cannot be molested by a policeman in the City of Titusville, who seeks to extort from him a sum of money, by virtue of a city ordinance. If he is not engaged in interstate commerce, then are not the grain merchant, or the dry goods merchant, who daily and hourly take orders for goods from citizens of Pennsylvania, for shipment to them from other states. It is not a question of the kind of commerce, but whether it is lawful commerce, carried on in a manner not injurious to the public interests, concerning a commodity the sale of which Is not injurious to public health, order or morals. These essentials being established, the next inquiries are: Had the commodity actually been sold in the state whose laws assumed to regulate traffic in it? Had it passed into the body of property of citizens of that state? If these things had happened, then the state could tax it, could regulate its sale, could require a license to deal in it. If they have not happened, and the citizen of Illinois is engaged in the act of selling his goods directly to the citizen of the State of Pennsylvania, then the State of Pennsylvania cannot interfere with such lawful commerce.

By reference to the facts in the case stated, (*Record, page* 16) and to the testimony, *Record, pages* 12 *and* 13, it will be seen that the business carried on was strictly within the rule prohibiting state or municipal interference.

J. A. Shepard was a manufacturer and dealer residing in Chicago, Illinois, of which state he is a citizen. He employed agents who solicited orders for his goods in Pennsylvania, by going personally to resients of the latter state, and exhibiting samples of his work. The defendant, Brennan, was the agent of Shepard, employed by him to carry on this business of soliciting and forwarding orders, paid by salary and commission and without interest in the ownership of the goods. Shepard shipped from Chicago the goods ordered through his agent, by express or freight, over the railways to Titusville, Pa., sometimes delivering and collecting the price through express companies, and sometimes through his agents. Brennan, the defendant, was so employed at the time of his arrest and had not been otherwise engaged in the business.

This case is like, but in some respects stronger than, that of Robins vs. Shelby Taxing District, 120 U. S. Red 489. Robins was engaged in Memphis, Tennessee, in the business of "drumming," that is, soliciting orders for a firm residing and doing business in Cincinnati, Ohio, exhibiting samples of his wares, which, in this instance, were paper, writing materials, etc. He was arrested in Memphis for not having taken out and paid for the privilege of soliciting orders for goods for his employers, as required by a law applicable to the Shelby Taxing District, providing that persons not having a regularly licensed place of business therein, offering for sale goods, wares or merchandise therein by sample, shall be required to pay to the county trustees $10 per week or $25 per month, etc.

The Supreme Court of the United States reversed the judgment of the Supreme Court of Tennessee, which held the defendant guilty under the act, and pronounced the law of Tennessee void so far as it affected a lawful business carried on between the citizens of one state with those of another, in the manner shown by the evidence in that case.

In the opinion of the court by Mr. Justice Bradley, page 493, the distinction between the powers of the state and those of the Federal government is clearly drawn, and those rules of action which are within the power of the former to make, are enumerated: "It is also an established principle, as already indicated, that the only way in which commerce between the states can be legitimately affected by the State laws, is when, by virtue of its police power and its jurisdiction over person and property within its limits, a state provides for the security of the lives, limbs, health and comfort of persons and the protection of property; or when it does those things which may otherwise incidentally affect commerce, such as the establishment and regulation of highways, canals, railroads, wharves, ferries and other commercial facilities; the passage of inspection laws to secure the due quality and measure of products and commodities; the passage of laws to regulate or restrict the sale of articles deemed injurious to the health or morals of the community; the imposition of taxes upon persons residing within the state or belonging to its population, and *upon avocations and employments pursued therein, not directly connected with foreign or interstate com-*

merce, or with some other employment or business, exercised under the authority of the constitution and laws of the United States; and the imposition of taxes upon all property within the state, mingled with and forming part of the great mass of property therein. But in making such internal regulations, a state cannot impose taxes upon persons passing through the state, or coming into it merely for a temporary purpose, especially if connected with interstate or foreign commerce; nor can it impose such taxes upon property imported into the state from abroad, or from another state, and not yet become part of the common mass of property therein; and no discrimination can be made by any such regulations adversely to the persons or property of other states; and no regulations can be made directly affecting interstate commerce. Any taxation or regulation of the latter character would be an unauthorized interference with the power given to congress over the subject."

This comprehensive declaration of the law has not been departed from, and is followed by the Supreme Court of Pennsylvania in Rothermel vs. Meyerle, 136 Penn. 250 256. It will not be pretended that the fact of the sale of goods by the citizen of Illinois, directly to a citizen of Pennsylvania, in any manner changes the character of the commerce. The intervention of a middle man, carefully provided for by the ordinance of the City of Titusville, as well as by the law applicable to the Shelby Taxing District, is not at all necessary, and as a matter of fact is directly injurious to the citizen purchasing.

Nor can it be said that the manner in which Mr. Shepard saw fit to sell his goods, by soliciting orders through his agent or "drummer" by sample, the agent going when necessary from house to house, affects the nature of the traffic. It can make no lawful difference whether the agent went from house to house, or from store to store, or from man to man. Soliciting people to buy was a necessary thing to be done in some form.

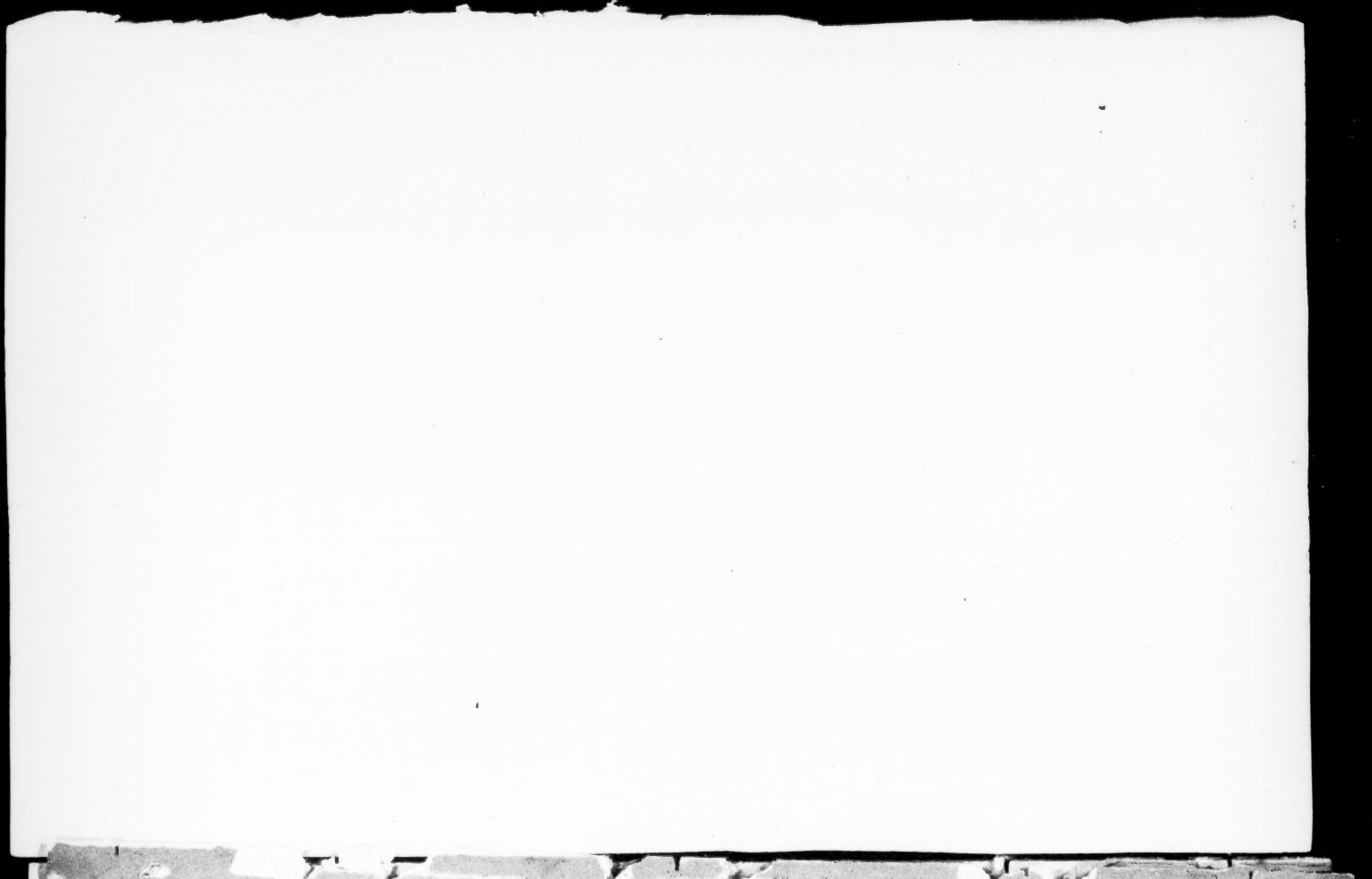
Nor can it make any difference that the vendor in Illinois dealt directly with the purchaser or consumer in Pennsylvania. And as to "packages," the goods were, according to the facts and evidence, put up in packages of the kind suitable to the articles to be transported and delivered.

The soliciting by a citizen of Illinois, whether done by letter, telegraph, telephone or through the mouth of an agent sent from Illinois to Pennsylvania, was lawful. If the articles sold were not injurious to the public morals, health or peace, if the agent carried on the business for the citizen of Illinois in an orderly, proper and lawful manner, neither the State of Pennsylvania, nor one of its municipal corporations, deriving all of its power from the legislature, and similarly restricted by the supreme law of the land, could tax Mr. Shepard's business or prevent the due prosecution of it, by the process of arresting one of his agents for not paying a license tax. This was an indirect tax upon Mr. Shepard's business and property, as held in the cases of Wilson vs. Missouri, 91 U. S. 175 and Walling vs. Michigan, 116 U. S. 246.

The later cases re-affirm the principles we have endeavored to present, as laid down in Leis vs. Hardin, 135 U. S. 100-124, and Robins vs. Shelby Taxing District, 120 U. S. 497. Some of these later cases are McCall vs. California, 136 U. S 104, and Minnesota vs. Barker, 136 U. S. 314. In the last case, on pages 326 and 327, the Court explains and makes clear the doctrine of Pattison vs. Kentucky, 97 U. S. 501, relied upon by court below, in its bearing upon the police power. Crowley vs. Cristensen, 132 U. S. 86, and Brimmer vs. Rebman, 138 U. S. 78, are upon the same points. In the latter case the principle is again upheld and re-affirmed that no matter what the form or intent of a statute of a state may be, if, in its effect, it takes from the citizen of one state any right granted or secured by the Constitution of the United States, such statute will be void.

It cannot be reasonably contended that Joseph A. Shepard, as manufacturer and dealer in picture frames and portraits in the State of Illinois, had not an indisputable right to sell them to a citizen of Pennsylvania, and to go into the latter state in person or by agent for that purpose, nor that if he transacted this business in the manner shown by the stated case and the evidence he was engaged in interstate commerce, and that it matters not whether he sold one frame in a package shipped to the purchaser or a thousand shipped in a railway car. If lawful and not injurious or dangerous, the quantity, kind or character of the articles dealt in nor the manner of its sale cannot destroy the right.

Roger Sherman
for plaintiff in error.



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BRIEF OF DEFENDANT IN ERROR.

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THE CITY OF TITUSVILLE.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA.

ARGUMENT OF DEFENDANT IN ERROR.

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides, inter alia, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Precisely what are the "privileges and immunities" that appertain to a citizen of the United States does not appear to be definitely settled. Upon this point there is and has

always been the greatest divergence of opinion, even among the members of this honorable court, and this question (the commerce clause of the constitution) has perhaps given rise to more litigation than any other, except that defining the judicial power of the Federal Government and that inhibiting states from passing laws impairing the obligation of contracts.

In the Slaughter-house cases, 83 U. S. 30, the court cites the cases of Corfield vs. Corgell, 4 Wash. C. C. 371; Ward vs. Maryland, 79, U. S. 418-430, and Paul vs. Virginia, 75 U. S. 168-180, to show that the fundamental rights of citizens of all free governments belong to that class which the State Governments were created to establish and secure. "With the exception of a few restrictions" says Miller, J., "the entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the constitutional and legislative power of the States, and without that of the Federal Government. Was it the purpose of the Fourteenth Amendment, by the simple declaration that no State should abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned from the States to the Federal Government? * * * And where it is declared that congress shall have the power to enforce that article, was it intended to bring within the power of congress the entire domain of civil rights heretofore belonging exclusively to the States? All this and more must follow if the proposition of the plaintiffs in error be sound."

The court having demonstrated that to the States belong the exclusive domain of civil rights, proceeds to enumerate some of the privileges and immunities that belong to a citizen of the United States, as such. Among them are the

right of access to the seat of government, seaports and treasuries, land offices and courts of justice; the right to demand the protection of the government when on the high seas, or in a foreign country; the right of petition and the privilege of the writ of *habeas corpus*.

The court in its interpretation of the privilege and immunity clause of the Fourteenth Amendment intimates that it did not confer upon citizens of the United States any privileges or immunities which they did not possess before its passage and that the framers of this clause had mainly in view a peculiar state of affairs at that time resulting from the termination of the rebellion of the Southern States, the emancipation of the colored people and their condition arising therefrom, calls attention to the fact that the amendment was particularly designed to ameliorate the condition of those people and expresses a fear of "the far-reaching and pervading consequences," which would ensue from the broad construction subsequently sought by some members of the court to be applied in their interpretation of this clause of the amendment. And it may here be observed that this honorable court has manifested a consciousness of the excessive latitude of such interpretation, in some of its recent decisions on the subject and hereinafter referred to.

In Brown vs. Maryland, 12 Wheaton U. S. reports, page 419, Chief Justice Marshall, in speaking of the conflict between the constitutional prohibition on the States to lay a duty on imports, and the acknowledged power of the States to tax persons and property within their respective territories, remarks as follows: "The power and the restriction on it, though quite distinguishable when they do not approach each other, may yet, like the intervening colors between white and black, approach so nearly as to perplex the vision"

in making the distinction between them, yet the distinction exists, and must be marked at the cases arise. Till they do arise, it might be premature to state any rule as being universal in its application."

The reserve police power of the States—one not granted to the Federal Government—has been the ground for the enactment of a great variety of State acts, regulating widely different subjects from the manufacture of oleomargarine in Pennsylvania, or the brewing of beer in Kansas, or the practice of medicine in Washington, to the washing of clothes in New Hampshire, and, as has been remarked by an eminent judge, "the scope of this power has been the subject of much controversy, and the term has been variously defined by the courts and text writers." In Beer Co. vs. Massachussetts, 97 U. S. 25, Bradley, J., in delivering the opinion of the court says: "All rights are held subject to the police power of the State. Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health and property of the citizens, and to the preservation of *good order* and the public morals. The legislature cannot, by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects, which demand the application of the maxim, *salus populi suprema lex.*" To the same effect in Barber vs. Connelly, 113 U. S. 27, Field, J., says: "The police power is that power which the State has to prescribe regulations to promote the health, peace, morals, education and *good order* of the people," and further (in the same case), after stating the true scope of the Fourteenth Amendment, "but neither the amendment—broad and

comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its 'police power,' to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity."

In Hayes vs. State of Missouri, 120 U. S. 68, "the Fourteenth Amendment," says Field, J., "to the constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to be operated. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the localities imposed."

In Powell vs. Pennsylvania, 127, U. S., 678 the court says, that the oleomargarine act "does not deny to any person the equal protection of the laws, because it places under the same restrictions all who manufacture or sell the articles embraced within its probibition, thus recognizing and preserving the principles of equality among those engaged in the same business."

In Munn vs. Illinois, 4, Otto, 113, the court declares that "a State can require all persons whose business is affected with a public interest," (in this instance the storage of grain in elevators) "to charge only such rates as shall be reasonable," and can even go farther and declare what rates shall be reasonable. See also "Granger" cases (reported in same volume) in which above doctrine was applied to the business of a common carrier.

In Pullman Car Company vs. Pennsylvania, 141 U. S. Reports 18, the court held that a State may tax the cars of a

foreign sleeping car company, employed in interstate commerce and which run into, through and out of such State, and declared that an act imposing such a tax is a valid and constitutional law.

That there is still much uncertainty with respect to the authority of the States over commerce not wholly internal, particularly in respect to the police power, and their power to tax the subjects of interstate commerce is evidenced by the recent decisions of this court in several important cases which qualify the principles laid down by it in prior cases upon which plaintiff in error relies. Thus, in Maine vs. Grand Trunk Railway Co., 142, U. S., 217, it was held that a State statute requiring every railroad within the State to pay an annual tax for its *franchise*, to be determined by the amount of its gross transportation receipts, and further providing that, when applied to a railroad lying partly within and partly without the State, the tax shall be equal to the proportion of the gross receipts in the State, did not conflict with the constitution of the United States. In this case Mr. Justice Bradley made his last public utterance from the bench in a strong dissent, concurred in by three other justices, taking the position that the laying of a tax upon the gross receipts of a company, including receipts for interstate and international transportation, was substantially a taxation of the revenues derived from interstate commerce, which had been held in many previous decisions to be unconstitutional, citing Philadelphia Steamship Company vs. Pennsylvania, 112 U. S. 326, and several other cases. The majority of the court, however, was of the opinion that this was an *excise tax* upon the corporation for the privilege of *exercising its franchises* within the State, and that the rule of apportioning the charge to the receipts was reasonable, and likely to

produce the most satisfactory results, both to the State and the corporation taxed.

In the Horn Silver Mining Co., vs. New York, 143 U. S. 305, it was held, Mr. Justice Harlan alone dissenting, that a statute of New York imposing a tax upon the *corporate franchise* or business of every corporation, organized under a law of any other State, to be computed by a percentage upon its whole capital stock, was not unconstitutional interference with interstate commerce, when applied to a manufacturing corporation organized under the laws of Utah, and doing a greater part of its business out of the State of New York, but doing a small part of its business within such State.

The principle involved in the case of Munn vs. Illinois (supra), which has given rise to so much controversy, was carefully reconsidered and adhered to in the case of Budd vs. New York, 143 U. S. 517, although in this case, as in the Munn case, there was a dissent by three of the justices.

In Ficklen vs. The Taxing District (decided recently by this court but unreported), a statute of Tennessee, imposing upon brokers a tax measured by the amount of capital invested or used in their business, was held to be proper, although the business done by the broker in question was the purchase of cotton for customers, residing outside of the State. The gist of the decision was, that as the State has the right to tax occupations, where a resident citizen engaged in such business, the fact that the business done, consisted wholly or partly in negotiating sales between resident and non-resident merchants, did not necessarily make the tax one upon interstate commerce.

In the case at bar, there is nothing in the record to show the plaintiff in error (Brennan) was not a citizen and

resident of Pennsylvania, the presumption therefore, is that he was a citizen and resident of Pennsylvania. Therefore, in the light of the recent decisions of this court, we contend that the fine and penalty imposed on the plaintiff in error by the Recorder, was not a taxing of goods of Shepard & Co., coming from another State as such, or by reason of their so coming, but a *license or excise tax* upon the vocation of Brennan, as a resident of Pennsylvania, and a restriction upon the manner of selling said goods—a police regulation of an occupation carried on in a manner offensive to the policy of the State, and an excise tax that did not discriminate in favor of residents or against non-residents. The fee required to be paid by the ordinance under which this suit originated is not a tax, in the common acceptance of that term, but a license fee. It is not a tax upon either the business or property of Shepard & Co., but a *condition precedent* before the plaintiff in error, Brennan, shall pursue the occupation or vocation of a canvasser, hawker, peddler or agent. Cooley on taxation, 386; Boroughs on taxation, Sec. 79; Cooley on constitutional limitations 202 and note.

If it be a license fee or license tax it cannot be a regulation of commerce. License tax cases, 5 Wall 471; Osborne vs. Mobile, 16 Wall 479; Ward vs. Maryland, 12 Wall 418.

It is competent for the legislature to grant a city or town power to require the payment of money as the condition of exercising particular employments. This is not in the nature of a *tax*, which must be general, but of *an excise on special vocations*. Dillon on municipal corporations, 4th edition, Sec. 357, note 3 and cases cited.

It is the *manner* in which the employment is exercised that is the subject of this police power and regulation.

which is a common law power incident to all municipal corporations.

The defendant in error, when the ordinance in question was enacted, was operating under and by virtue of the provisions of the Act of Assembly, of the State of Pennsylvania, of May 23, 1874, P. L., pages 230 to 271. By virtue of the provisions of said act, defendant in error was empowered "to enact and ordain any and all ordinances not repugnant to the constitution and laws of this State, and such as it shall deem expedient for the good government of the city, the preservation of the peace and good order, the suppression of vice and immorality, the benefit of trade and commerce, and the health of the inhabitants thereof and such other ordinances, rules and regulations, as may be necessary to carry such powers into effect, and the same to alter, modify or repeal." Section 20, p. 238.

In addition to this general power, special power is granted by said Section (20) of said act, to enact ordinances (and by clause 16 of said Section to enforce them by penalties), to levy and collect a license tax on hawkers, peddlers, merchants of all kinds, and all kinds of business, and regulate the same by ordinance. Clause 4, of said Section (20) of said act, reads as follows: "To levy and collect a license tax on * * hawkers, peddlers, * * merchants of all kinds, * * * and regulate the same by ordinance."

Counsel for plaintiff in error in his brief, (*pages* 8 and 9) misquotes clause 4, of Section 20, of act of May 23, 1874, as follows: "VI, 'to levy and collect *for general revenue purposes*, a license tax on all * * * hawkers, peddlers, produce or merchant vendors, * * merchants of all kinds * * * and to regulate the collection of the same,'" or, rather he quotes clause 4, of Section 3, of Act of Assembly,

of Pennsylvania, approved May 23, 1889, which is another and different act from the one under and by virtue of which the ordinance in question was enacted, and therefore his argument in this particular, in addition to being misleading, must fail for want of foundation on which to base it.

By Clause 35, of Section 20, of act of May 23, 1874, power is granted defendant in error, "to make all such ordinances, by-laws, rules, regulations and resolutions not inconsistent with the laws of the State, as may be expedient in addition to the special powers in this Section (20) granted, maintaining the peace, good government, and welfare of the city and its trade, commerce and manufactories, and to enforce all ordinances by inflicting penalties upon inhabitants or other persons for violation thereof, not exceeding one hundred dollars for any offence, recoverable with costs, together with judgment of imprisonment, if the amount of said judgment and costs shall not be paid."

By virtue of the power and authority of Section 20, of said act of 1874, defendant in error, under date of June 25th, 1888, enacted an ordinance which, inter alia, required, "that all persons canvassing or soliciting within said city, orders for goods, books, paintings, wares or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Mayor a license to *transact said business*, and shall pay to the treasurer therefor, the following sums, according to the time for which said license shall be granted, viz: For one day, $1.50; one week, $5.00; three months, $10.00; one year, $25.00; *provided* that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers residing and doing business in said city." Said ordinance further provides that the obtaining

of a license from the Mayor of said city shall be a prerequisite for the transaction of said business, and "that any person or persons failing to obtain a license as required by this ordinance shall upon conviction thereof, before any magistrate, alderman or justice of the peace of said city, forfeit and pay a fine not exceeding one hundred dollars, nor less than the amount required for a license to such person or persons, together with twenty per cent added as a penalty, with costs of suit; and in default of payment thereof, shall undergo a confinement in the city or county prison for a period not exceeding ninety days, or perform hard labor on the streets or elsewhere in said city not exceeding such period."

The act of May 23, 1889, above referred to continues in force this ordinance.

The act of assembly of the Commonwealth of Pennsylvania of May 17th, 1883, P. L., page 31, which provides "that * * * it shall be unlawful for any city, borough or municipality, to levy a license or mercantile tax upon persons taking orders for merchandise by sample from dealers, for individuals or companies who pay a license or mercantile tax at their chief places of business, and that it shall be unlawful for any city, borough or municipality to collect such license or mercantile tax hereafter levied by virtue of any ordinance of any city, borough or municipality, *provided*, that nothing in this act shall authorize such person to sell by retail to others than dealers or merchants," is an implied legislative recognition of the defendant's power to enact the ordinance in question.

This power is recognized and affirmed by the Supreme Court of Pennsylvania in several cases, among them Warren Borough vs. Geer, 117 Pa. State Reports 207; Commonwealth

vs. Gardner, 133 Pa. State Report 284, and City of Titusville vs. Brennan, 143 Pa. State Report page 642.

In the case of Warren Borough vs. Geer (supra) where the ordinance and the issue were identical with those in this case, Green, J., in delivering the opinion of the Court, says: "There is nothing in the ordinance in question, in this case, which conflicts with the Constitution of Pennsylvania," and again, "The peddling of other articles besides market produce, includes everything which may be disposed of by the method called 'hawking and peddling,' and we cannot say that this does not include *canvassing from house to house, and soliciting orders for books.*"

"The laws" (of Pennsylvania) "against peddling, are not in violation of the constitutional right, as set forth in the declaration of rights of 'acquiring, possessing and protecting property.' They are directed *not against the right of acquisition* but *the manner in which some people exercise that right.* They are not an invasion of the exclusive right of congress to regulate interstate commerce. They do not affect the free interchange of commodities between citizens of the different States without regard to State lines. The citizen of another State may come into Pennsylvania when he will and stay as long as he chooses, open as many places for the sale of his goods as he may see fit, and enjoy the same measure of freedom in regard to the conduct of his business as a native citizen. When he comes he is under the protection of its laws, but the correlative duty of obedience rests on him. His rights are equal to, but not above those of her citizens." Commonwealth vs. Gardner (supra).

The ordinance in question does not interfere with the privilege of *drummers* carrying on business in the city of Titusville, with licensed merchants or dealers. Its provisions

are directed only against the "intrusive domiciliary visitation" of canvassers, peddlers, who go *from house to house* "in relentless pursuit of a purchaser, pressing his wares on the attention of those who neither need nor wish for them, "and who from inexperience or ignorance are liable to be imposed upon and defrauded by vagrant persons, who under pretence of being canvassers and peddlers, are frequently nothing but advance couriers of burglaries and other felonies and misdemeanors.

In Robins vs. Shelby taxing district, 120 U.S.489, the court evidently had in mind in rendering its opinion, the transaction of business between experienced licensed merchants and drummers. Bradly, J., in delivering the opinion in that case, concedes that "commerce between States can be *legitimately* affected by State laws, when by virtue of its police power, and its jurisdiction over persons and property within its limits, a State provides for the security of the lives, limbs, health and comfort of persons and the protection of property."

What can be more annoying to the people or more destructive of their *comfort* and happiness than the "intrusive domiciliary visitations" of itinerant peddlers and canvassers, whose name is legion and who assail the privacy of domestic life and have mostly to deal with innocent and unsuspecting women and children, defrauding them of money and property and then fleeing to other States, leaving their victims without redress. Can it, with reason, be said that the enactment of a law or ordinance which has in view the restriction of such practices is not a legitimate exercise of the police power of a State or city, even though it may *indirectly* affect interstate commerce.

In the able dissenting opinion of Chief Justice Waite, (with whom Mr. Justice Field and Mr. Justice Grey con-

curred) in Robins vs. Shelby taxing district (supra), he says, "I am unable to see any difference in principle between a tax on a seller by sample and a tax on a peddler, and yet I hardly believe it would be contended that the provisions of the same statute, now in question, which fixes a license fee for all peddlers in the district, would be held to be unconstitutional in its application to peddlers who come with their goods from another State and expected to go back again. As the law is valid so far as the inhabitants of the State are concerned, no inhabitant can engage in this business, unless he pays the tax If citizens of other States cannot be taxed in the same way for the same business, there will be discrimination against the inhabitants of Tennessee, and in favor of those of other States. This could never have been intended by the legislature and I cannot believe the constitution of the United States makes such a thing necessary. The constitution gives the citizens of each State all the privileges and immunites of citizens in the several States, but this certainly does not guarantee to those who are doing business in States, other than their own, immunities from taxation on that business to which citizens of the State where the business is carried on are subjected."

To hold that the citizens of a State should be subject to its police power and regulations, but that canvassers, hawkers and peddlers coming from other States and infesting the homes of its citizens at all seasons and imposing their worthless goods upon gullible or inexperienced house-maids or house-wives, should, under the guise of interstate commerce, be permitted without any restraint whatever to go on deceiving and injuring the public, would be, to use the language of Mr. Justice Williams, "a startling and unlooked for result of the investment of the general government with the power to regulate commerce."

In his argument on behalf of appellant (Brennan) in the supreme court below counsel for plaintiff in error concedes, that said court "in Commonwealth vs. Gardner property, held that 'the person who thus peddled was not to be protected, because his employer lived in another State.' The employer himself would have been guilty if he had peddled soap from house to house in small packages. This is a clear and necessary power of the State, to protect its citizens from the peddler who is transient, with no fixed place of business, who seeks customers by invading their homes, and makes sales by persuading people to buy what they do not need, and who, by the time he is wanted to answer for his representations and engagements, is out of sight and out of reach of process."

If, as is conceded, the citizen should be protected from the peddler, *a fortiori*, should he not be protected from the canvasser, if, as has been doubted, there is any distinction between them? If the peddler carries with him packages of "Soapine," or other articles, the house-maid or house-wife has the advantage of inspecting what she is buying before she purchases it; but in the case of the canvasser with sample, the purchaser sees only the sample, and is obliged to rely entirely on the good faith of the canvasser that the article to be delivered at some future time, will be of equal quality with the sample shown. If sent by express, the purchaser must pay for the article before delivery, and without the privilege of inspection. If the article is not as represented, what recourse has the impecunious purchaser? The canvasser is out of sight and out of reach of process, and the poor deluded purchaser is out of pocket. It will not signify to say that Shepard & Co., of Chicago, are responsible. They may or may not be. The purchaser has only the word of

the itinerant canvasser that they are. If they are, the purchaser must seek his remedy in the forum which has jurisdiction over Shepard & Co. Is he likely to, even if financially able?

By the *provision* in the ordinance in question, the canvasser is permitted to sell, without license, to manufacturers or licensed merchants or dealers. This is right and proper. The merchant, manufacturer or dealer is able by his experience to protect himself against the deception and impositions of the canvasser. The credulous and inexperienced householder is not. The canvasser can sell to the merchant and the merchant to the householder. In case the goods are not such as represented by the merchant, the householder has his remedy in the forum of his and the merchant's domicile. We submit that a distinction should be made between one who canvasses and solicits for goods from house to house, and one who sells by sample to licensed merchants and dealers. Unless this be so held, cities will be inundated by a class of men ostensibly merchants, but, in very many cases, vagabonds going from house to house imposing worthless goods and otherwise deceiving and injuring the public.

We think this is a matter that comes within the police supervision of the municipality, and that such dealing should be regulated in the same manner as hawking and peddling and kindred vocations are regulated, and while the imposition of a license tax may not wholly prevent fraudulent dealing and impositions, still it affords in some degree a guarantee of the legitimacy of the transactions and an opportunity to the authorities of supervising their dealings.

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for Defendant in Error